

1 BEFORE THE
2 POLLUTION CONTROL HEARINGS BOARD
 STATE OF WASHINGTON

3 IN THE MATTER OF)
4 LENNY CAMPBELL dba LENNY'S))
5 FUEL COMPANY,)
 Appellant,)
6 v.)
)
7 PUGET SOUND AIR POLLUTION)
8 CONTROL AGENCY,)
 Respondent.)
9 _____)

PCHB No. 79-136

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

10 This matter, the appeal from the issuance of a \$250 civil
11 penalty, came before the Pollution Control Hearings Board, Nat W.
12 Washington, Chairman, Chris Smith, and David Akana (presiding), at a
13 formal hearing in Seattle on December 5, 1979.

14 Appellant, Leonard J. Campbell, appeared pro se.; respondent was
15 represented by its attorney, Keith D. McGoffin.

16 Having heard the testimony, having examined the exhibits, and
17 having considered the contentions of the parties, the Board makes
18 these

1 FINDINGS OF FACT

2 I

3 On July 3, 1979 at about 11:00 a.m., as a result of a citizen
4 complaint, respondent's inspector visited a coal unloading operation
5 located at Fifth Avenue South and South Royal Brougham Street in
6 Seattle. There the inspector watched the unloading of coal from a
7 railroad car and the loading of coal upon trucks. As a part of the
8 operation, coal was dropped on the ground and loaded by a front-end
9 loader into waiting trucks. Some coal dust from handling the coal
10 became airborne and drifted at least 75 feet to the east and became
11 deposited upon the adjacent real property there located. Boxes
12 owned by such occupant and then being unloaded exhibited a thin
13 covering of coal dust.

14 For the above-described occurrence appellant was issued a Notice
15 of Violation from which followed a \$250 civil penalty for the
16 alleged violation of Section 9.04 of respondent's Regulation 1.

17 II

18 Appellant was issued a notice of violation on January 2, 1979
19 for the alleged violation of Section 9.15(a) of Regulation 1
20 relating to the emission of coal dust during coal-handling
21 operations. No civil penalty was assessed for this violation.

22 III

23 The site has been historically used as a coal unloading site.
24 Consequently, coal dust from past operations can be found on the
25 ground by the unloading site. Passing trucks can make the residual
26 coal dust become airborne.

IV

Appellant puts water on the coal to control coal dust. A water truck is located at the site to provide more water during the operation. At the time of the violation on July 3 the water truck was being refilled and was not available to control the dust.

V

Pursuant to RCW 43.21B.260, respondent has filed a certified copy of its Regulation 1 and amendments thereto which we notice.

Section 9.04 makes it unlawful for any person to cause or allow the discharge of particulate matter which becomes deposited upon the real property of others.

Section 9.15(a) makes it unlawful for any person to cause or permit particulate matter to be handled, transported, or stored without taking reasonable precautions to prevent the particulate matter from becoming airborne.

Section 3.29 provides for a civil penalty of up to \$250 per day for each violation of Regulation 1.

VI

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

Appellant violated Section 9.04 of Regulation 1 as alleged on July 3, 1979. A civil penalty for the violation was therefore properly imposed. The penalty is reasonable in amount and should be

1 affirmed.

2 II

3 Any Finding of Fact which should be deemed a Conclusion of Law
4 is hereby adopted as such.

5 From these Conclusions the Board enters this


6 ORDER

7 The \$250 civil penalty is affirmed.

8 DATED this 19th day of December, 1979.

9 POLLUTION CONTROL HEARINGS BOARD

10 
11 NAT W. WASHINGTON, Chairman

12 
13 CHRIS SMITH, Member

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15 DAVID AKANA, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER 4